

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,	)	CASE NO. 96-6112
	)	CIV
Plaintiff,	)	
	)	MAGISTRATE JUDGE
v.	)	
	)	Filed: January 30, 1996
SCUBA RETAILERS	)	
ASSOCIATION, INC.,	)	<u>COMPLAINT</u>
	)	
Defendant.	)	
_____	)	

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant, and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed under Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, in order to prevent and restrain violations by defendant of Section 1 of the Sherman Act, 15 U.S.C. § 1, and this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

2. Defendant transacts business and is found in the Southern District of Florida within the meaning of 15 U.S.C. § 22 and 28 U.S.C. § 1391. Some of the unlawful acts described herein

were conceived, performed, or made effective within Broward County.

## II.

### DEFENDANT

3. Defendant is an Illinois corporation with its principal place of business in Somerville, Massachusetts. Defendant is a trade association with some 450 members who act as retail vendors of scuba diving equipment to the public. Defendant's members compete with one another to sell scuba equipment to the public.

## III.

### TRADE AND COMMERCE

4. Scuba diving equipment is sold to the public by retail vendors throughout the United States. Retail vendors of scuba diving equipment, including members of defendant, purchase scuba diving equipment from manufacturers, who are located throughout the United States as well as outside of the United States, for resale throughout the United States.

5. A substantial portion of the revenues earned by retail vendors, including members of defendant, is derived from the sale of scuba diving equipment that is within the flow of and substantially affects interstate trade and commerce.

6. The sale of scuba diving equipment to the public constitutes a line of commerce and relevant product market within the meaning of Section 1 of the Sherman Act.

7. The United States constitutes a relevant geographic market within the meaning of Section 1 of the Sherman Act.

IV.

ALLEGED VIOLATIONS

COUNT ONE

8. In January 1992, Rodale Press, Inc. (hereinafter "Rodale Press") announced that it would begin publishing Rodale's Scuba Diving magazine in the Spring of 1992.

9. Upon information and belief, Rodale's Scuba Diving magazine has the second-largest circulation of general interest scuba diving magazines that are published in the United States.

10. In the October 1993 issue of Rodale's Scuba Diving magazine, an advertisement for a snorkel manufactured by Divaire, Inc. (hereinafter "Divaire") appeared. The advertisement included a toll-free telephone number.

11. Several members of defendant's board of directors called the telephone number and learned that Divaire was selling its products directly to consumers via the toll-free number.

12. As a company engaged in the sale of scuba diving equipment to the public through the mail, Divaire competed with retail dive stores, including members of the defendant, for the sale of scuba diving equipment to the general public.

13. Upon learning that Divaire was selling scuba diving equipment directly to the public through the mail, defendant, at the behest of some of its members, embarked upon a campaign demanding that Divaire sell its products through retail dive stores only.

14. On or about September 3, 1993, a member of defendant's

board of directors telephoned Divaire's office in Walled Lake, Michigan. The member identified himself as a representative of defendant and said that defendant was upset that Divaire was selling scuba diving equipment directly to consumers.

15. Shortly thereafter, the editor of defendant's trade magazine, the Scuba Retailer, and the same member of defendant's board of directors telephoned Divaire's office. They threatened to write a negative article about Divaire in the Scuba Retailer and to "blackball" Divaire in the scuba diving industry if Divaire did not stop selling its products directly to consumers.

16. The same member of defendant's board of directors also telephoned the executive editor of Rodale's Scuba Diving magazine. The member requested that Rodale Press assist defendant in persuading Divaire to sell its products only through retail dive stores.

17. On or about September 6, 1993, the executive editor of Rodale's Scuba Diving magazine telephoned Divaire, stated that the defendant requested that Rodale Press encourage Divaire to market its products only through retail dive stores, and urged that Divaire in fact market its products only through retail dive stores, including stores owned and operated by members of defendant.

18. As a direct consequence of the actions of defendant, and others, including defendant's threat to "blackball" Divaire in the scuba diving industry, Divaire agreed to sell its products to the public through retail dive stores only and not to compete against retail dive stores, including members of defendant.

19. After Divaire agreed to sell its products to the public only through retail dive stores, the defendant publicized the

incident in its trade magazine, the Scuba Retailer, which is circulated throughout the industry. Specifically, the defendant thanked Rodale Press for its support and Divaire for its cooperation and encouraged retail dive stores to purchase products from Divaire in return for its cooperation.

20. Through the actions of members of the defendant's board of directors, acting in the defendant's behalf, defendant, its members, and others participated in a horizontal group boycott or concerted refusal to deal to eliminate or otherwise suppress competition, including price competition, in the sale of scuba diving equipment.

21. The group boycott or concerted refusal to deal described above had the effect of unreasonably restraining trade in the sale of scuba diving equipment.

22. The group boycott or concerted refusal to deal described above constitutes a naked contract, combination, or conspiracy that unreasonably restrains trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. There is a significant likelihood that the offense will recur unless the relief hereinafter prayed for is granted.

#### COUNT TWO

23. Paragraphs one through nine are incorporated herein as though fully set forth herein.

24. Retail dive stores, including members of defendant, compete with mail-order vendors, which often sell scuba diving equipment at a discount price, for the sale of scuba diving equipment to the general public.

25. On or about October 1990, the defendant had polled its

members, who consist mostly of owners of retail dive stores, and learned that its members adamantly opposed the sale of scuba diving equipment by mail-order vendors.

26. At a trade show held in Houston, Texas, between January 16 and January 19, 1992, members of defendant's board of directors learned that Rodale's Scuba Diving magazine would accept advertising for the sale of scuba diving equipment through the mail.

27. Upon learning that Rodale's Scuba Diving magazine would include advertising for the sale of scuba diving equipment through the mail, defendant, acting pursuant to a request made of it by some of its members, embarked upon a campaign to obtain the agreement of Rodale Press to change its advertising policy for the magazine by excluding any advertising for the sale of scuba diving equipment through the mail.

28. Defendant, through its members, including members of the board of directors, contacted other persons and organizations active in the scuba diving industry and insisted that such persons demand of Rodale Press that it not accept mail-order advertising in Rodale's Scuba Diving magazine.

29. Defendant published in its trade magazine several articles which attacked Rodale Press for intending to accept mail-order advertising in Rodale's Scuba Diving magazine. At all relevant times, defendant's trade magazine, the Scuba Retailer, was edited by members of defendant's board of directors. The magazine was distributed to all segments of the scuba diving industry. At least one article in the Scuba Retailer urged that retail dive stores, including the defendant's members, not sell Rodale's Scuba Diving magazine because that the magazine would

carry mail-order advertising.

30. Following the publication of these articles in the Scuba Retailer, various retail dive stores, which had agreed to sell Rodale's Scuba Diving magazine in their stores, contacted Rodale Press and canceled such agreements and refused to sell the magazine because it planned to carry mail-order advertising.

31. At a meeting of the Florida Area Dive Operators, held on April 21, 1992, in Fort Lauderdale, Florida, members of defendant met with the publisher of Rodale's Scuba Diving magazine and insisted that the publisher agree not to accept any mail-order advertising in the magazine. The next day, the chairperson of the defendant's board of directors met with the publisher and again insisted that Rodale Press agree to change its advertising policy for the magazine by excluding any advertising for the sale of scuba diving equipment through the mail.

32. As a consequence of the concerted demands by defendant, its members, and others, Rodale Press agreed to change its advertising policy for Rodale's Scuba Diving magazine so as to prohibit any advertising for the sale of scuba diving equipment through the mail. Said policy, announced on May 1, 1992, essentially continues to the present time.

33. After Rodale Press agreed to change its advertising policy, the defendant publicized the change in policy in the Scuba Retailer. Specifically, the chairperson of the SRA thanked and congratulated Rodale Press in a "Chairman's Message" in the Scuba Retailer for Rodale Press's decision not to carry advertising for the sale of scuba diving equipment through the mail. Defendant's chairperson also thanked the retailers,

manufacturers, and resort operators "who contributed to this effort" and added that retail dive stores should support Rodale's Scuba Diving magazine in return for Rodale's cooperation.

34. Even after Rodale Press's decision not to carry mail-order advertising in Rodale's Scuba Diving magazine, the defendant continued to publish articles critical of and in opposition to the mail-order sale of scuba diving equipment.

35. Through the actions of members of the defendant's board of directors, acting in the defendant's behalf, defendant, its members, and others participated in a horizontal group boycott or refusal to deal to eliminate or otherwise suppress competition, including price competition, in the sale of scuba diving equipment.

36. The group boycott or concerted refusal to deal described above had the effect of unreasonably restraining trade in the sale of scuba diving equipment.

37. The group boycott or concerted refusal to deal described above constitutes a naked contract, combination, or conspiracy that unreasonably restrains trade and commerce in violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. There is a significant likelihood that the offense will recur unless the relief hereinafter prayed for is granted.

#### PRAYER

WHEREFORE, plaintiff prays:

1. That defendant be enjoined from preventing or attempting to prevent mail-order vendors of scuba diving equipment from access to the means of obtaining, marketing, or selling scuba diving equipment, including but not limited to the advertising of scuba diving equipment for sale through the mail



or other means;

2. That defendant be further enjoined from taking any action to encourage any person to sell its product only through retail dive stores;

3. That plaintiff have such other and further relief as the Court may deem just and proper; and

4. That plaintiff recover the costs of this action.

Dated: January 30, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Anne K. Bingaman  
Assistant Attorney General

\_\_\_\_\_  
Richard E. Reed

\_\_\_\_\_/s/\_\_\_\_\_  
Joel I. Klein  
Deputy Assistant Attorney  
General

\_\_\_\_\_  
Stephen C. Gordon

\_\_\_\_\_/s/\_\_\_\_\_  
Rebecca P. Dick  
Deputy Director of Operations

\_\_\_\_\_  
Jeffrey L. Berhold

\_\_\_\_\_  
John T. Orr  
Chief

\_\_\_\_\_  
Kendall Coffey  
United States Attorney  
Southern District of Florida

Attorneys  
U.S. Department of Justice  
Antitrust Division  
75 Spring Street, S.W.  
Suite 1176  
Atlanta, Georgia 30303  
(404) 331-7100  
(404) 331-7110 (Fax)